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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/092,726      | 03/08/2002  | Raymond Hunt         | 713-623             | 7340             |

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EXAMINER

DAVIS, CASSANDRA HOPE

ART UNIT

PAPER NUMBER

3611

DATE MAILED: 09/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                             |                  |
|------------------------------|-----------------------------|------------------|
| <b>Office Action Summary</b> | Application No.             | Applicant(s)     |
|                              | 10/092,726                  | HUNT, RAYMOND    |
|                              | Examiner<br>Cassandra Davis | Art Unit<br>3611 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 13 June 2003 .  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-28 is/are pending in the application.  
 4a) Of the above claim(s) 22-26 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1, 3-7, 9-19, 27, 28 is/are rejected.  
 7) Claim(s) 2 and 20 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.  
 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.  
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.  
 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                    6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. Claims 4, 5, 6, 14, 15, 17, 27, and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
2. Regarding claims 4, 5, 6, 14, 15, 17, 27, and 28, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 4, 9, 12, 13, 14, 18, 27, and 28 rejected under 35 U.S.C. 102(b) as being anticipated by Ellingson, U. S. Patent 4,012,878. Ellingson teaches a unitary wall member guard comprising a pair of interconnected, non-parallel first arms (14b and 14c), and a second pair of second arms for contacting an article (12a and 12b), wherein the first arms are non-parallel with the second arms.
3. With respect to claims 3, 4, 13, and 14, Ellingson teach the guard being made of a resilient PVC.
4. Claim 9, 10, 11, 13, 14, 18, 19, 28, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagner, U. S. Patent 5,517,794. Wagner teaches a comprising

pair of interconnected, non-parallel first arms (24 and 26), and a second pair of second arms for contacting an article (32 and 42), wherein the first arms are parallel with the second arms.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 5, 6, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellingson. Since the applicant does not disclose that wood derivative solves any stated problem or is for any particular purpose, it appears that making the device of any suitable material such as PVC as taught by Ellingson would perform equally well.

7. Claim 7 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellingson in view of Schrage, U. S. Patent 5,115,917. Schrage, teaches a corner support assembly having indicia formed thereon. (See column 5, line 46-50). It would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the guard taught by Ellingson with indicia thereon provide a means to convey information.

***Allowable Subject Matter***

8. Claims 8 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cassandra Davis whose telephone number is 703-308-2223. The examiner can normally be reached on Monday-Friday 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 703-308-0629. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.



Cassandra Davis  
Primary Examiner  
Art Unit 3611

CD  
August 25, 2003